



General Assembly

January Session, 2007

**Amendment**

LCO No. 8048

**\*SB0125808048SD0\***

Offered by:  
SEN. FINCH, 22<sup>nd</sup> Dist.

To: Subst. Senate Bill No. 1258      File No. 564      Cal. No. 447

**"AN ACT CONCERNING UNDERGROUND STORAGE TANKS."**

1      Strike everything after the enacting clause and substitute the  
2      following in lieu thereof:

3      "Section 1. (NEW) (*Effective October 1, 2007*) The owner or operator  
4      of an underground storage tank system storing petroleum that is  
5      subject to section 22a-449(d)-101 et seq. of the regulations of  
6      Connecticut state agencies, who owns or operates more than ten  
7      facilities with underground storage tank systems, may store records  
8      required to be maintained under section 22a-449(d)-103(e) of the  
9      regulations of Connecticut state agencies, in a central location in the  
10     state of Connecticut, provided such owner or operator: (1) Specifies, in  
11     writing, the location of any such centrally stored records and such  
12     other information as the Commissioner of Environmental Protection  
13     may prescribe related to such storage on a form prescribed by said  
14     commissioner and submits such form to said commissioner; and (2)  
15     ensures that such records are immediately available for inspection by  
16     the Commissioner of Environmental Protection, or the commissioner's  
17     designee, at any such central location. The following records may not

18 be stored solely at such a central location but shall be maintained at the  
19 site of the underground storage tank system: (A) A copy of all  
20 Underground Storage Tank Facility Notification Forms, or EPHM-6,  
21 submitted to the commissioner, regarding underground storage tanks  
22 for the site; (B) for all metallic underground storage tank systems,  
23 records concerning the most recent cathodic protection test; (C) for  
24 underground storage tank systems with impressed current cathodic  
25 protection, the last six months of records regarding the inspection of  
26 the cathodic protection systems, if applicable; (D) the most recent prior  
27 twelve months of records related to repairs of the underground storage  
28 tank system required by section 22a-449(d)-103(d)(6) of the regulations  
29 of Connecticut state agencies; (E) the most recent six months of records  
30 demonstrating compliance with the release detection requirements of  
31 section 22a-449(d)-104 of the regulations of Connecticut state agencies,  
32 including, but not limited to, inventory control and reconciliation of  
33 such inventory control records; (F) records regarding the two most  
34 recent underground storage tank tightness pursuant to section 22a-  
35 449(d)-104(e)(3) of the regulations of Connecticut state agencies; and  
36 (G) any other records regarding an underground storage tank system  
37 that the commissioner specifies, in writing, that a facility shall keep on-  
38 site. Nothing in this section shall affect any requirement of chapter  
39 446k of the general statutes other than the location of where certain  
40 records may be stored.

41 Sec. 2. Section 22a-449m of the general statutes is repealed and the  
42 following is substituted in lieu thereof (*Effective October 1, 2007*):

43 (a) Any remediation of contaminated soil or groundwater the cost of  
44 which is to be paid out of the subaccount established under subsection  
45 (b) of section 22a-449c shall be performed by or under the direct onsite  
46 supervision of a registered contractor, as defined in sections 22a-449l  
47 and 22a-449n and shall be performed in accordance with regulations  
48 adopted by the commissioner pursuant to section 22a-133k that  
49 establish direct exposure criteria for soil, pollutant mobility criteria for  
50 soil and groundwater protection criteria for GA and GAA areas. If the  
51 replacement of any such residential underground heating oil storage

52 tank system performed pursuant to the provisions of this section  
53 involves installation of an underground petroleum storage tank, such  
54 tank shall conform to any standards which apply to new underground  
55 petroleum storage tanks.

56 (b) The commissioner shall adopt regulations, in accordance with  
57 the provisions of chapter 54, setting forth the standards and criteria for  
58 residential underground heating oil storage tank systems which may  
59 include, but not be limited to, (1) standards for criteria for the design,  
60 installation, operation, maintenance and monitoring of such facilities,  
61 (2) the life expectancy after which such systems must be removed and  
62 replaced, and (3) standards and procedures for the granting of a  
63 waiver for the installation of a new residential underground heating  
64 oil storage tank system or the replacement of an existing system. The  
65 commissioner shall adopt regulations, in accordance with the  
66 provisions of chapter 54, regarding the removal of all pipes connected  
67 to both above ground and underground residential heating oil storage  
68 tank systems, when a storage tank is removed, regardless of the  
69 storage tank's capacity.

70 Sec. 3. Subsection (f) of section 22a-449 of the general statutes is  
71 repealed and the following is substituted in lieu thereof (*Effective from*  
72 *passage*):

73 (f) The Commissioner of Environmental Protection may adopt  
74 regulations, in accordance with the provisions of chapter 54, to  
75 establish (1) requirements for the inspection of nonresidential  
76 underground storage tank systems for compliance with the  
77 requirements of this chapter, including, but not limited to, the  
78 minimum frequency, method and content of inspections, and  
79 maintenance and disclosure of results, (2) a program to authorize  
80 persons to (A) perform inspections, including, but not limited to,  
81 education and training requirements for such persons, and whether or  
82 not such persons may be employed by the owner or operator of the  
83 subject nonresidential underground storage tank system, and (B)  
84 determine whether the violations for which a nonresidential

85 underground storage tank system has been taken out of service  
86 pursuant to subsection (g) of this section have been corrected, which  
87 regulations may include, but not be limited to, a prohibition for an  
88 owner or operator of any such system from placing such system back  
89 into service pursuant to subsection (g) of this section after the  
90 regulations take effect or additional requirements for an owner or  
91 operator of any such system, and [(C)] (3) requirements, in addition to  
92 the requirements contained in subsection (g) of this section, relating to  
93 the prohibition of deliveries to and the use of nonresidential  
94 underground storage tank systems that are not in compliance with  
95 section 22a-449o or with the requirements of this section and any  
96 regulations adopted under this section.

97 Sec. 4. Subsection (a) of section 22a-449c of the general statutes is  
98 repealed and the following is substituted in lieu thereof (*Effective from*  
99 *passage*):

100 (a) (1) There is established an account to be known as the  
101 "underground storage tank petroleum clean-up account". The  
102 underground storage tank petroleum clean-up account shall be an  
103 account of the Environmental Quality Fund. Notwithstanding any  
104 provision of the general statutes to the contrary, any moneys collected  
105 shall be deposited in the Environmental Quality Fund and credited to  
106 the underground storage tank petroleum clean-up account. Any  
107 balance remaining in said account at the end of any fiscal year shall be  
108 carried forward in said account for the fiscal year next succeeding.

109 (2) The account shall be used by the Commissioner of  
110 Environmental Protection to provide money for reimbursement or  
111 payment pursuant to section 22a-449f, as amended by this act, to  
112 responsible parties or parties supplying goods or services, for costs,  
113 expenses and other obligations paid or incurred, as the case may be, as  
114 a result of releases, and suspected releases, costs of investigation and  
115 remediation of releases and suspected releases, and for claims by a  
116 person other than a responsible party for bodily injury, property  
117 damage and damage to natural resources that have been finally

118 adjudicated or settled with the prior written consent of the board. The  
119 commissioner may also make payment from the account to an assignee  
120 who is in the business of receiving assignments of amounts approved  
121 by the board, but not yet paid from the account, provided the party  
122 making any such assignment, using a form approved by the  
123 commissioner, directs the commissioner to pay such assignee, that no  
124 cost of any assignment shall be borne by the account and that the state  
125 and its agencies shall not bear any liability with respect to any such  
126 assignment.

127 (3) Notwithstanding the provisions of this section regarding  
128 reimbursements of parties pursuant to section 22a-449f, as amended by  
129 this act, and regulations adopted pursuant to section 22a-449e, and  
130 regardless of when an application for payment or reimbursement from  
131 the account may have been submitted to the board, payment or  
132 reimbursement shall be made in accordance with the following: (A)  
133 After June 1, 2004, no payment or reimbursement shall be made for  
134 any costs, expenses and other obligations paid or incurred for  
135 remediation, including any monitoring to determine the effectiveness  
136 of the remediation, of a release to levels more stringent than or beyond  
137 those specified in the remediation standards established pursuant to  
138 section 22a-133k, except to the extent the applicant demonstrates that it  
139 has been directed otherwise, in writing, by the commissioner; (B) after  
140 June 1, 2005, no payment or reimbursement from the account shall be  
141 made to any person for diminution in property value or interest,  
142 provided that reimbursement for interest accrued on attorneys' fees  
143 may be permitted if an application seeking interest accrued on  
144 attorneys' fees was submitted to the commissioner on or before March  
145 31, 2003, and such application has been tabled by the board for three or  
146 more years; and (C) after June 1, 2005, no payment or reimbursement  
147 from the account shall be made for attorneys' fees or other costs of  
148 legal representation paid or incurred as a result of a release or  
149 suspected release (i) in excess of five thousand dollars to any  
150 responsible party, (ii) in excess of ten thousand dollars to any person  
151 other than a responsible party, and (iii) by a responsible party

152 regarding the defense of claims brought by another person, except that  
153 applications for reimbursement filed on or before June 30, 2005, shall  
154 not be subject to the limitations for reimbursement imposed by clauses  
155 (i) and (ii) of this subparagraph. In addition, notwithstanding the  
156 provisions of this section regarding reimbursements of parties  
157 pursuant to section 22a-449f, as amended by this act, the responsible  
158 party shall bear all costs of the release that are less than ten thousand  
159 dollars and all persons shall bear all costs of the release that are more  
160 than one million dollars, except that for any such release which was  
161 reported to the department prior to December 31, 1987, and for which  
162 more than five hundred thousand dollars has been expended by the  
163 responsible party to remediate such release prior to June 19, 1991, the  
164 responsible party for the release shall bear all costs of such release  
165 which are less than ten thousand dollars or more than five million  
166 dollars, provided the portion of any reimbursement or payment in  
167 excess of three million dollars may, at the discretion of the  
168 commissioner, be made in annual payments for up to a five-year  
169 period. There shall be allocated to the department annually, for  
170 administrative costs, two million dollars.

171 Sec. 5. Subdivision (1) of subsection (b) of section 22a-449f of the  
172 general statutes is repealed and the following is substituted in lieu  
173 thereof (*Effective from passage and applicable to applications filed with the*  
174 *underground storage tank petroleum clean-up account on or after July 1,*  
175 *2005*):

176 (b) (1) In addition to all other applicable requirements, a person  
177 seeking payment or reimbursement from the account shall  
178 demonstrate that when the total costs, expenses or other obligations in  
179 response to a release or suspected release (A) are two hundred fifty  
180 thousand dollars or less, that all labor, equipment and materials  
181 provided after October 1, 2005, and all services and activities  
182 undertaken after October 1, 2005, [shall be] are approved, in writing,  
183 either by the commissioner or by a licensed environmental  
184 professional with a currently valid and effective license issued  
185 pursuant to section 22a-133v; and (B) exceed two hundred fifty

186 thousand dollars, that all labor, equipment and materials provided  
187 after October 1, 2005, and all services and activities undertaken after  
188 October 1, 2005, [shall be] are approved, in writing, by the  
189 commissioner, [or that] provided the commissioner [has authorized]  
190 may authorize, in writing, [an] a licensed environmental professional  
191 with a currently valid and effective license issued pursuant to section  
192 22a-133v to approve, in writing, such labor, equipment, materials,  
193 services and activities, in lieu of [a written approval by] the  
194 commissioner. The provisions of this subsection shall apply to all costs,  
195 expenses or other obligations for which a person is seeking payment or  
196 reimbursement from the account and the board shall not order and the  
197 commissioner shall not make payment or reimbursement from the  
198 account for any cost, expense or other obligation, unless the person  
199 seeking such payment or reimbursement [includes with an application  
200 or with a request for payment or reimbursement all written approvals]  
201 provides the written approval required by this subdivision. Any  
202 written approval provided by a licensed environmental professional  
203 pursuant to this subdivision shall be submitted with the application for  
204 payment or reimbursement. Any written approval provided by the  
205 commissioner pursuant to this subdivision shall not constitute an  
206 approval pursuant to any other provision of the general statutes or any  
207 regulation and shall be presented to the board prior to the board  
208 making a decision regarding the application that such approval  
209 concerns.

210 Sec. 6. Subsection (c) of section 22a-449f of the general statutes is  
211 repealed and the following is substituted in lieu thereof (*Effective from*  
212 *passage and applicable to applications filed with the underground storage tank*  
213 *petroleum clean-up account either prior to or subsequent to the effective date*  
214 *of this section, except that the provisions of subparagraph (A) of subdivision*  
215 *(10) of this subsection shall be applicable only to applications filed on or after*  
216 *October 1, 2007*):

217 (c) The board shall order reimbursement or payment from the  
218 account for any cost paid or incurred, as the case may be, if, (1) such  
219 cost is or was incurred after July 5, 1989, (2) a responsible party was or

220 would have been required to demonstrate financial responsibility  
221 under 40 CFR Part 280.90 et seq. as said regulation was published in  
222 the Federal Register of October 26, 1988, for the underground storage  
223 tank or underground storage tank system from which the release  
224 emanated, whether or not such party is required to comply with said  
225 requirements on the date any such cost is incurred, provided if the  
226 state is the responsible party, the board may order payment from the  
227 account without regard to whether the state was or would have been  
228 required to demonstrate financial responsibility under said sections 40  
229 CFR Part 280.90 et seq., (3) after the release, if any, the responsible  
230 party incurred a cost, expense or obligation for investigation, cleanup  
231 or for claims of a person other than a responsible party resulting from  
232 the release, provided any such claim shall be required to be finally  
233 adjudicated or settled with the prior written approval of the board  
234 before an application for reimbursement or payment is made, (4) the  
235 board determines that the cost, expense or other obligation is  
236 reasonable and that there are not grounds for recovery specified in  
237 subdivision (1) or (3) of subsection (g) of this section, as amended by  
238 this act, (5) the responsible party notified the commissioner of the  
239 release in accordance with regulations adopted pursuant to section  
240 22a-449 or, where such regulations are not applicable, as soon as  
241 practicable, and notified the board, as soon as practicable, of any claim  
242 by a person other than a responsible party, resulting from the release,  
243 (6) the responsible party, or, if a person other than a responsible party  
244 applies for payment or reimbursement from the account, then such  
245 person demonstrates the remediation, including any monitoring to  
246 determine the effectiveness of the remediation, for which payment or  
247 reimbursement is sought is not more stringent than that required by  
248 the remediation standards established pursuant to section 22a-133k,  
249 except to the extent the responsible party or such person demonstrates  
250 that it has been directed otherwise, in writing, by the commissioner, (7)  
251 the responsible party, or, if a person other than a responsible party  
252 applies for payment or reimbursement from the account, then such  
253 person demonstrates that it does not have insurance, or a contract or  
254 other agreement to provide payment or reimbursement for any cost,



255 expense or other obligation incurred in response to a release or  
256 suspected release, or if there is any such insurance, contract or other  
257 agreement, that any insurance coverage has been denied or is  
258 insufficient to cover the costs, expenses or other obligations, paid or  
259 incurred or that any contract or other agreement is not able to or is  
260 insufficient to cover the costs, expenses or other obligations, paid or  
261 incurred, for which payment or reimbursement is sought from the  
262 account, (8) the responsible party demonstrates and the board  
263 determines that one of the milestones noted in section 22a-449p has  
264 been completed, (9) the board determines what, if any, reductions to  
265 the amounts sought from the account should be made based upon the  
266 compliance evaluations performed pursuant to subsection (d) of this  
267 section, and (10) [if] at the time any application or request for payment  
268 or reimbursement, including any supplemental application or request,  
269 is submitted to the board, (A) for applications filed with the  
270 underground storage tank petroleum clean-up account on or after  
271 October 1, 2007, there is no underground storage tank system subject  
272 to the requirements of subdivision (2) of this subsection dispensing  
273 petroleum on the property where the release or suspected release  
274 emanated or occurred, [then the responsible party demonstrates] and if  
275 the application is submitted by the person who owns or operates the  
276 underground storage tank system at the time of the release, such  
277 person demonstrates, in addition to all other applicable requirements,  
278 that lack of compliance with provisions of the general statutes and  
279 regulations governing underground storage tank systems was not a  
280 proximate cause of the release or suspected release and that there are  
281 not grounds for recovery specified in subdivision (2) of subsection (g)  
282 of this section, as amended by this act, or (B) for applications filed with  
283 the underground storage tank petroleum clean-up account prior to  
284 October 1, 2007, there is no underground storage tank system  
285 dispensing petroleum on the property where the release or suspected  
286 release emanated or occurred, and if the application is submitted by  
287 the person who owns or operates the underground storage tank  
288 system at the time of the release, such person demonstrates, in  
289 addition to all other applicable requirements, that lack of compliance

290 with provisions of the general statutes and regulations governing  
291 underground storage tank systems was not a proximate cause of the  
292 release or suspected release and that there are not grounds for  
293 recovery specified in subdivision (2) of subsection (g) of this section, as  
294 amended by this act. In acting on an application or a request for  
295 payment or reimbursement, the board, using funds from the account,  
296 may contract with experts, including, but not limited to, attorneys and  
297 medical professionals, to better evaluate and defend against claims and  
298 negotiate claims by persons other than responsible parties. The costs of  
299 the board for experts shall not be charged to the amount allocated to  
300 the Department of Environmental Protection pursuant to section 22a-  
301 449c, as amended by this act. If a person other than a responsible party  
302 applies to the board claiming to have suffered bodily injury, property  
303 damage or damage to natural resources, the board shall order  
304 reimbursement or payment from the account if such person  
305 demonstrates that subdivisions (1), (2), (6) and (7) of this subsection are  
306 satisfied, the board determines that as a result of a release or suspected  
307 release such person has suffered bodily injury, property damage or  
308 damage to natural resources, that the costs, expenses or other  
309 obligations incurred are reasonable and the person submitting such  
310 claim demonstrates that it has attempted to or has provided written  
311 notice of its claim to the responsible party as required in subsection (a)  
312 of this section and that the responsible party has not applied to the  
313 board for payment or reimbursement of this claim. On or before June  
314 30, 2005, if the board denied reimbursement or provided for only  
315 partial payment or reimbursement from the account regarding a  
316 release, pursuant to subdivision (4) of this section, such denial or  
317 partial payment or reimbursement shall remain in effect and shall  
318 apply to all subsequent applications or requests for payment or  
319 reimbursement regarding such release.

320 Sec. 7. Subsection (g) of section 22a-449f of the general statutes is  
321 repealed and the following is substituted in lieu thereof (*Effective from*  
322 *passage and applicable to applications filed with the underground storage tank*  
323 *petroleum clean-up account both prior to and subsequent to the effective date*

324 of this section):

325 (g) The Attorney General, upon the request of the board or the  
326 commissioner, may institute an action in the superior court for the  
327 judicial district of Hartford to recover the amounts specified in this  
328 section from any person who owns or operates an underground  
329 storage tank system at the time a release emanates or occurs from such  
330 system or any person who owns the real property on which a release  
331 emanates or occurs, provided such person owned the real property at  
332 or any time after the release emanates or occurs until the time that a  
333 final remediation action report is submitted by a licensed  
334 environmental professional or approved by the commissioner  
335 pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the  
336 occurrence of the release, the underground storage tank or  
337 underground storage tank system from which the release emanated  
338 was required by regulations adopted under section 22a-449, as  
339 amended by this act, to [submit a notification to the commissioner but  
340 no such notification was provided] be the subject of an Underground  
341 Storage Facility Notification Form, or EPHM-6 but the person who  
342 owns or operates or who owned or operated such tank or tank system  
343 knowingly and intentionally failed to submit such notification form to  
344 the commissioner; (2) the release results from a reckless, wilful,  
345 wanton or intentional act or omission of such person or a negligent act  
346 or omission of such person that constitutes noncompliance with the  
347 general statutes or regulations governing the installation, operation  
348 and maintenance of underground storage tanks; or (3) the release  
349 occurs from an underground storage tank or system which is not in  
350 compliance with a final order issued by the commissioner pursuant to  
351 this chapter or a final judgment issued by a court concerning  
352 noncompliance with a requirement of this chapter; or (4) payment has  
353 been made from the account, including payment to the commissioner  
354 pursuant to subsection (i) of this section, to a person other than a  
355 person against whom an action may be brought pursuant to this  
356 subsection. All costs to the state relating to actions to recover such  
357 payments, including, but not limited to, reasonable attorneys' fees,

358 shall initially be paid from the underground storage tank petroleum  
 359 clean-up account. In any recovery the board or the commissioner is  
 360 entitled to recover from such person (A) all payments made from the  
 361 account with respect to a release or suspected release, (B) all payments  
 362 made by the commissioner pursuant to subsection (i) of this section  
 363 with respect to a release or suspected release, (C) interest on such  
 364 payments at a rate of ten per cent per year from the date such  
 365 payments were made, and (D) all costs of the state relating to actions to  
 366 recover such payments, including, but not limited to, reasonable  
 367 attorneys' fees. All actions brought pursuant to this section shall have  
 368 precedence in the order of trial, as provided in section 52-191. If the  
 369 Attorney General has filed an action against a person seeking recovery  
 370 of the amounts specified in this subsection or if the commissioner  
 371 sends a person a demand letter regarding costs incurred by the state  
 372 pursuant to section 22a-451, any such person against whom an action  
 373 has been brought or who receives a demand letter shall not submit an  
 374 application or request for payment or reimbursement to the board  
 375 seeking payment or reimbursement of any such amount sought by the  
 376 Attorney General or by the commissioner. If any such application or  
 377 request for payment or reimbursement is submitted, the board shall  
 378 not take any action regarding any such application or request."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	22a-449m
Sec. 3	<i>from passage</i>	22a-449(f)
Sec. 4	<i>from passage</i>	22a-449c(a)
Sec. 5	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account on or after July 1, 2005</i>	22a-449f(b)(1)

Sec. 6	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account either prior to or subsequent to the effective date of this section, except that the provisions of subparagraph (A) of subdivision (10) of this subsection shall be applicable only to applications filed on or after October 1, 2007</i>	22a-449f(c)
Sec. 7	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account both prior to and subsequent to the effective date of this section</i>	22a-449f(g)